IN THE

Supreme Court of the United States

No. 72-953

MICHAEL O'SHEA AND DOROTHY SPOMER,
Petitioners,

vs.

EZELL LITTLETON, ET AL.,
Respondents.

No. 72-955

W. C. SPOMER,
Petitioner,

vs.

EZELL LITTLETON, ET AL.,
Respondents.

No. 72-1107

PEYTON BERBLING AND EARL A. SHEPHERD, JR.,
Petitioners,

vs.

EZELL LITTLETON, ET AL.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION.

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Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION.

Respondents, individually and on behalf of the class of persons specified in the amended complaint, file this brief

in opposition to the several petitions for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Seventh Circuit is reported as *Littleton* v. *Berbling*, 468 F. 2d 389 (7th Cir. 1972). The opinion of the District Court for the Eastern District of Illinois is not reported.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on October 6, 1972. On November 3, 1972 petitioners Dorothy Spomer and Michael O'Shea filed with the Court of Appeals a Motion for Recall and Stay of the Mandate pending a petition for certiorari in this Court. The motion was denied on November 7, 1972. Petitioners Peyton Berbling and Earl A. Shepherd, Jr. did not file a similar motion. On November 22, 1972, petitioners Dorothy Spomer and Michael O'Shea filed an Application for Stay of Mandate of United States Court of Appeals for the Seventh Circuit with the Honorable William H. Rehnquist. The application was granted on November 28, 1972. That application was subsequently referred to the Court and granted on December 11, 1972. On December 13, 1972 petitioners Peyton Berbling and Earl A. Shepherd, Jr. filed an Application for Stay of Mandate of United States Court of Appeals for the Seventh Circuit with the Honorable William H. Rehnquist. The application was denied on December 19, 1972. On January 9, 1973 respondents filed with the Honorable William H. Rehnquist their Application for Extension of Time to File Brief in Opposition to Petition for Writ of Certiorari to and including March 12, 1973 so that they could file a single brief in response to the several petitions. This application was granted on

January 12, 1973. This Court's jurisdiction is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Whether a federal court has the authority under the Civil Rights Act to enjoin state judges, a state's attorney, and an investigator from engaging in an invidious pattern and practice of racial discrimination in the administration of criminal justice?

2. Whether the doctrines of judicial and quasi-judicial immunity bar an action under the Civil Rights Act seeking equitable relief?

3. Whether the doctrine of quasi-judicial immunity cloaks a state's attorney with immunity from an action in damages when he engages in racial discrimination in the exercise of his office?

4. Whether the doctrine of quasi-judicial immunity applies to an investigator, employed by the Office of State's Attorney, who engages in racial discrimination?

5. Whether the amended complaint adequately states claims under the Civil Rights Act?

STATEMENT OF THE CASE.

Respondents brought this action under 42 U. S. C. §§ 1981, 1982, 1983 and 1985 (hereinafter referred to as the "Civil Rights Act") and 28 U. S. C. § 1343(3) and (4) on behalf of themselves and black persons of the City of Cairo, Illinois against the petitioners who, as public officials administering criminal justice in Alexander County, systematically discriminate against them and members of their class on the basis of race. The racial discrimination, it is alleged, has a chilling effect on respondents' exercise of their right to assemble peaceably. The constitutional rights

invaded are the First, Eighth, Thirteenth and Fourteenth Amendments.

Petitioners filed motions to dismiss the amended complaint. The district court on March 23, 1971 dismissed respondents' claims for injunctive relief on the ground of lack of jurisdiction and dismissed respondents' claims against petitioners Berbling and Shepherd for damages on the ground that the doctrine of quasi-judicial immunity bars relief. The Court of Appeals for the Seventh Circuit, on October 6, 1972, reversed the district court's decision.

The petitioners are: Dorothy Spomer and Michael O'Shea, associate judges, of the Circuit Court for Alexander County; Peyton Berbling, state's attorney for Alexander County when this case was filed; W. C. Spomer, the current state's attorney for Alexander County; Earl A. Shepherd, Jr., an investigator, not a lawyer, employed by the Office of State's Attorney.

Respondents seek equitable relief against each of the petitioners and damages against Berbling and Shepherd.

The amended complaint alleges that since the early 1960's black persons of the City of Cairo, Illinois have been actively seeking equal opportunity and treatment in such areas as employment, housing, education and ordinary day-to-day relations with white persons and officials of Cairo. In furtherance of this equality quest, respondents and members of their class encourage others to engage in an economic boycott of local merchants who engage in racial discrimination. This equality quest generated and continues to generate substantial antagonism from not only the public officials in Cairo but also the white persons. The amended complaint charges that petitioners' discriminatory administration of criminal justice inhibits respondents' exercise of their right to assemble peaceably.

Spomer and O'Shea Conduct.

Spomer and O'Shea, as judges, engage in a pattern and practice of racial discrimination[1] against respondents and members of their class as follows: They set bond in criminal cases by following an unofficial bond schedule applicable to black persons without regard to the facts of the case or circumstances of an individual defendant. They sentence black persons to longer criminal terms and impose harsher conditions than they do for white persons who are charged with the same or equivalent conduct. They require black persons, when charged with violations of City ordinances, to pay for a trial by jury, yet do not require other persons to pay for a trial by jury.[2]

Berbling Conduct.

Berbling engages in a pattern and practice of racial discrimination in the exercise of his office by refusing to permit black persons to give evidence of criminal conduct committed by white persons against black persons. He refuses to initiate criminal proceedings against white persons arising out of assaults and batteries committed by them against black persons. He refuses to proceed on black person's complaints by information. He interrogates black persons before the grand jury with the purposeful intent of depriving the black persons of their right to present their evidence to the grand jury. In some instances before the grand jury he declines to interrogate the black com-

1. It is also alleged that their discrimination is based upon economic status. The effect insofar as the right to injunctive relief is concerned is the same. *See Boddie* v. *Connecticut*, 401 U. S. 371 (1971).

2. In Illinois, a defendant has a right to a trial by jury in such cases, even if the penalty is a fine and not a jail sentence. Ill. Const., Art. 1, § 13.

plainants at all. When white persons are prosecuted on the basis of complaints by respondents, Berbling engages in a practice of inadequately prosecuting in order to lose the cases or to settle them on terms more favorable than those accorded black persons. He engages in the practice of recommending greater bonds and sentences in cases involving black persons than those of white persons. He engages in a practice of bringing significantly more serious charges against black persons for conduct which would result in no charge or a minor charge against white persons.

All of the alleged practices assertedly carried on by Berbling are willful and malicious with an intent to deprive respondents of their right to give evidence against those who threaten their security, peace and tranquility and to deprive respondents of their right to hold property to the same extent as is enjoyed by white persons and to deter respondents from engaging in a peaceful boycott and other activities protected by the First Amendment.

The amended complaint describes a number of specific examples illustrative of the complained of conduct.

After the Court of Appeals for the Seventh Circuit reversed the lower court decision, W. C. Spomer succeeded Berbling as State's Attorney and accordingly Spomer was automatically substituted as a party to the extent the cause affects the Office of State's Attorney of Alexander County as provided under Rule 48(3) of this Court. Respondents seek only equitable relief against petitioner W. C. Spomer. Because the amended complaint asks relief against Berbling in his individual as well as his official capacity, he remains a party in interest in this action.

Shepherd Conduct.

Shepherd as an investigator engages in a pattern and practice of racially discriminatory conduct in that he re-

fuses to permit respondents to give evidence against white persons respecting acts threatening their personal safety. For example, on August 10, 1970, Shepherd refused to permit respondent Hazel James, a black woman, to file criminal charges against Raymond Hurst, a white man, who kicked her in the stomach on August 8, 1970 while she peacefully demonstrated against the racially discriminatory practices of merchants and public officials. His refusal was based on the fact that Hazel James is a black person.

Shepherd and Berbling Conduct.

Shepherd and Berbling, in conspiracy, engaged in a practice of discriminatory conduct in that together they prevented respondents, because of their race, from giving evidence against white persons respecting acts threatening their personal safety.

Petitioners urge that the amended complaint does not allege that any of the plaintiffs has been a victim of their discrimination. A careful review of the amended complaint, however, refutes their contention, as noted by the Seventh Circuit. Paragraph 1 of the amended complaint provides that respondents and members of their class have been deprived by all petitioners of certain enumerated rights guaranteed by the Constitution and laws of the United States. Paragraph 3 of the amended complaint provides that respondents are members of the class on whose behalf the action is brought in addition to having brought the action individually. Paragraphs 35 and 36 of the amended complaint provide that the actions of O'Shea and Spomer, as judges, have deprived and continue to deprive respondents and members of their class of rights guaranteed by the Constitution and laws of the United States. In Paragraphs 37 and 38, it is alleged that each of the practices referred to in the amended com-

plaint is carried out with the intent to deprive "plaintiffs and members of their class of the benefit of the criminal justice system of Alexander County" and that each of such practices is carried out with the "intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States". The amended complaint is reproduced in the Appendix to respondents' brief in opposition to the petitions for a writ of certiorari.

ARGUMENT.

I. A federal court has the authority under the Civil Rights Act to enjoin state judges, a state's attorney and an investigator from engaging in an invidious pattern and practice of racial discrimination in the administration of criminal justice.

The decisions of this Court sustain the position of the Court of Appeals for the Seventh Circuit that state judges, a state's attorney, and an investigator are not immune from the equitable powers of a federal court under the Civil Rights Act. The thrust of the civil rights statutes, which were enacted to implement the Fourteenth Amendment to eradicate the vestiges of slavery from American society, is crystal clear. They provide a mechanism whereby the federal system may intervene when a citizen is deprived of rights guaranteed to all, irrespective of race. *See Bell* v. *Hood*, 327 U. S. 678 (1946); *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409 (1968). No person, irrespective of his official position, may, by design or otherwise, subject a citizen to a deprivation of any rights secured by the Constitution or laws of the United States. *See Dombrowski* v. *Pfister*, 380 U. S. 479 (1965). The fact that Spomer and O'Shea are judges, Berbling and W. C. Spomer are

state's attorneys, and Shepherd is an investigator in a state's attorney's office does not relieve them of their fealty to the Constitution and laws of the United States. *United States* v. *McLeod*, 385 F. 2d 734, 738 n.3 (5th Cir. 1967); *Ill. Rev. Stat.*, ch. 37 § 72.2 (1969); *Ill. Rev. Stat.*, ch. 14 § 1(1969). The petitioners stand in this litigation as instrumentalities of the State and thus are bound to abide by the strictures of the Constitution and laws of the United States. *Cooper* v. *Aaron*, 358 U. S. 1, 16-18 (1958).

In *Mitchum* v. *Foster*, 407 U. S. 225, 92 S. Ct. 2151 (1972), this Court stated that the Civil Rights Act fundamentally altered the federal system. As a result of the constitutional amendments and statutes passed subsequent to the Civil War,

> "the role of the Federal Government as a guarantor of basic federal rights against state power was clearly established. . . . Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation."
>
> "It is clear from the legislative debates surrounding passage of § 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment 'against state action, whether that action be executive, legislative, or *judicial*.'" (Emphasis in original.) *Id.* at 2160-61.

In *Cooper* v. *Aaron*, 358 U. S. 1, 17 (1958), this Court stated:

> "In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by *state legislators or state executives or judicial officers*, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'" (Emphasis added.)

These principles, indeed, were enunciated by the Court almost a century ago. In 1880, in *Ex parte Virginia*, 100 U. S. 339, 347, this Court stated:

> "A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." *Id.*

The decision of the Seventh Circuit is not in conflict with this Court's decision in *Pierson* v. *Ray*, 386 U. S. 547 (1967). In *Pierson*, the Court was concerned with an action for damages, not one for equitable relief, against a state judge. Moreover, the record in *Pierson*, unlike here, was "barren of any proof or specific allegation that Judge Spencer played any role in these arrests and convictions other than to adjudge petitioners when their cases came before this Court." *Id.* 553. In the subject case it is alleged that the petitioners are engaging in a pattern and practice of racial discrimination and that they are not merely exercising discretion within the bounds of the Constitution and laws of the United States.

The Seventh Circuit decision, moreover, is consistent with decisions of other circuits. *See, e.g., Machesky* v. *Bizzell*, 414 F. 2d 283 (5th Cir. 1969); *Shaw* v. *Garrison*, 467 F. 2d 113 (5th Cir. 1972), *cert. denied*, 92 S. Ct. 1253

(1972); *Phillips* v. *Cole*, 298 F. Supp. 1049 (N. D. Miss. 1968); *Bramlett* v. *Peterson*, 307 F. Supp. 1311, 1321-22 (M. D. Fla. 1969). In general, the cases cited by petitioners are not inconsistent with these decisions. Their cases either relate to actions in damages against judges or do not involve situations of a pattern and practice of racial discrimination.

In sum this is not a case in which a federal district court is asked merely to substitute its judgment for the judgment of state judges, a state's attorney, or an investigator arising out of discretionary action in an isolated case by a disgruntled litigant. This is not a case in which injunctive relief would constitute an unwarranted intrusion into the operation of the state judiciary or office of state's attorney. Rather, this is a case in which Spomer and O'Shea, as judges, Berbling (and W. C. Spomer as his successor) as state's attorney, and Shepherd, as an investigator, use their official positions to engage in a systematic pattern of discrimination whereby persons, because of their race, are treated in a manner different from others. When state officials pervert their office by acting in such fashion in violation of the Constitution and laws of the United States, they have acted outside their judicial and quasi-judicial capacity and may be enjoined by a federal court. The exclusion of black persons from the benefits of citizenship is not within the limits of their discretion. *Cf. Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 151-2 (1970). Under these allegations, the amended complaint meets not only the standards for federal involvement under *Mitchum, supra*, but also those espoused in *Younger* v. *Harris*, 401 U. S. 37 (1971), and its companion cases. *See also Hadnott* v. *Amos*, 393 U. S. 815 (1968) and *Hadnott* v. *Amos*, 394 U. S. 358 (1969).

II. The doctrine of quasi-judicial immunity does not cloak a state's attorney from an action for damages when he engages in racial discrimination in the exercise of his office.

The Court of Appeals held that a prosecutor is not cloaked with absolute immunity from suits for damages. When he acts outside of his jurisdiction or when he engages in duties analogous to that of policemen, such as the investigation of crimes, immunity does not apply. This decision is consistent with decisions of other circuits and with analogous decisions of this Court .

Because respondents seek long denied constitutional rights by demonstrating on the public ways against local public officials and merchants, they repeatedly are victims of assaults and batteries committed by white persons. Whether it be by reason of prejudice, neglect or otherwise, Berbling as the instrumentality of the state, who had knowledge of this criminal violence, made no effort to bring the guilty to punishment or afford protection or redress to the outraged and victimized. Berbling was unwilling to enforce state criminal laws when the victims were black persons and the accused were white persons. He consistently and repeatedly refused to take evidence of criminal conduct and turned a deaf ear to complaints of black persons; he refused to investigate their complaints; he refused to initiate criminal proceedings against their assailants; he refused to present appropriate evidence to the grand jury. The direct consequence of Berbling's policy was to deny respondents, because of their race, access to the criminal justice system for the resolution of grievances.

It is long established that when a public official acts outside of his quasi-judicial capacity, he is not immune from a claim for damages. Racial discrimination in the conduct

of an office is prohibited by the Constitution of the United States and the statutes of the State of Illinois. The exclusion of black persons and those actively supporting them from the benefits of the criminal justice system, because of their race, was not within Berbling's discretion. A state's attorney has a mandatory, non-discretionary and ministerial duty to exercise his office in a non-discriminatory manner. When he fails to so conduct his office, he acts outside his quasi-judicial capacity and is, therefore, personally liable for the consequences of his non-protected conduct. *See Ex parte Virginia,* 100 U. S. 339 (1880).

Additionally, the doctrine of quasi-judicial immunity does not extend to many of the duties of a state's attorney. Berbling is charged with refusing to take complaints from black persons, with refusing to investigate criminal conduct of whites against blacks, with refusing to present evidence of such criminal conduct to the grand jury, and with refusing to recommend bail and sentence without regard to race. In this respect his function is analogous to that of an investigator or policeman, and thus he is not immune from liability. When Berbling deprived respondents of access to the judicial system by his refusal to take evidence of white criminal conduct, he stood in no different a position than the prison warden who deprived a prisoner access to the courts. *See Johnson* v. *Avery,* 393 U. S. 483 (1969). When Berbling refused to gather evidence of white criminal conduct he stood in no different a position than the police officer who unlawfully carried out an investigation. *See Monroe* v. *Pape,* 365 U. S. 167 (1961).

The decision of the Seventh Circuit is consistent with decisions of other circuits. In *Lewis* v. *Brautigam,* 227 F. 2d 124 (5th Cir. 1955), the Fifth Circuit held that a state's attorney who ordered two deputy sheriffs to force the plaintiff to be photographed in convict garb at a state prison and to plead guilty could be liable for damages under Sec-

tions 1983 and 1985. In *Robichaud* v. *Ronan*, 351 F. 2d 533 (9th Cir. 1965), the Ninth Circuit held that a complaint stated a civil rights claim for damages against the prosecuting attorneys for prosecuting plaintiff on a murder charge with malicious motive and without probable cause. The complaint alleged that plaintiff had been arrested and confined for 25 days without a preliminary hearing. Efforts were made to extract a confession from him. The court stated:

> "Section 1983 . . . was intended to provide a remedy to persons subjected to '[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, . . .' [citing cases]. Thus, if immunities are broadly granted to state officers without consideration of the nature of their alleged misdeeds and the reason for the immunity, the statute becomes subject to circumvention, if not emasculation." *Id.* at 536.

In upholding the complaint, the court said:

> " '[P]rosecutors are not immune from suit under the Act simply as a matter of status wholly without regard to the nature of their conduct.' "
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> • • • • •
>
> "The title of office, quasi-judicial or even judicial, does not, of itself, immunize the officer from responsibility for unlawful acts which cannot be said to constitute an integral part of judicial process." *Id.* at 537-38.

In *Hilliard* v. *Williams*, 465 F. 2d 1212 (6th Cir. 1972), *cert. denied*, ... U. S. ....., 93 S. Ct. 461 (1972), the Sixth Circuit held that deliberate suppression of favorable evidence by a prosecuting attorney in violation of plaintiff's constitutional rights was an act outside his quasi-judicial capacity and beyond the scope of "duties constituting an integral part of the judicial process". The Sixth Circuit reversed the district court's dismissal of plaintiff's com-

plaint, stating that a prosecuting attorney was not immune from liability in damages if plaintiff proved the allegations of her complaint.

Other cases which have held that a prosecuting attorney may be liable in damages under Sections 1983 and 1985 include *Johnson* v. *Crumlish*, 224 F. Supp. 22 (E. D. Pa. 1963), and *Madison* v. *Purdy*, 410 F. 2d 99 (5th Cir. 1969).

The cases cited by petitioner Berbling, although applying immunity to some factual situations, are distinguishable from the subject case in that they do not involve actions for damages arising out of racial discrimination.

This is not a case that demands, for policy reasons, protection of an officer who exercised his best judgment and abided his oath to uphold the Constitution. This is far from the type of case brought by a bitter defendant claiming that his civil rights were violated by a state's attorney's abuse of discretion in the course of litigation. Above all, this is not a case of intermittent and sporadic activity open to criticism but not to liability. The conduct charged was an official, determined and willful program of refusing to take evidence of white criminal conduct when the victims were black persons, to bring the guilty to punishment, and to afford equal protection and standing that no one has a right to impair. In *Bell* v. *Hood*, 327 U. S. 678, 684 (1946), this Court stated:

> "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done."

III. The doctrine of quasi-judicial immunity does not apply to an investigator employed by a state's attorney.

Shepherd is an investigator who is employed by the Office of State's Attorney. He is not an assistant state's attorney nor is he a lawyer. His sole purpose is to investigate. His duties consist of interviewing witnesses, taking complaints and making investigations. The decision of the Seventh Circuit that Shepherd, as an investigator, is not entitled to immunity is consistent with decisions of this Court and courts of other circuits. His function is in the nature of a policeman-detective and as such he is not entitled to quasi-judicial immunity from damage actions. His sole defense is that of good faith, just as a policeman has a defense of good faith. Shepherd's failure to perform his affirmative, non-discriminatory duty to take evidence of criminal conduct of white persons against black victims constitutes both a willful and wanton omission in violation of the civil rights statutes and is a denial of equal protection of the laws. *See Monroe* v. *Pape*, 365 U. S. 167 (1961); *Griffin* v. *Breckenridge*, 403 U. S. 88 (1971); *Madison* v. *Purdy*, 410 F. 2d 99 (5th Cir. 1969).

IV. The amended complaint adequately states claims under the Civil Rights Act.

In finding that respondents' amended complaint states claims under the Civil Rights Act,[3] the Seventh Circuit followed established law that in appraising its sufficiency it must follow "the accepted rule that a complaint should not

3. The court thought that, in order to warrant the removal of the cloak of immunity from liability of Berbling and Shepherd for damages, the amended complaint might be more specific in alleging that the complained of conduct is outside quasi-judicial activity. The court, however, stated that that determination should be left to the district court and, if adverse to respondents, respondents should be permitted to amend their complaint.

be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitled him to relief." *Conley* v. *Gibson*, 355 U. S. 41, 45-46 (1957); *see also Lucarell* v. *McNair*, 453 F. 2d 836, 838 (6th Cir. 1972); *Scher* v. *Board of Educ. of West Orange*, 424 F. 2d 741, 744 (3rd Cir. 1970). Mere vagueness or lack of detail is not a ground for a motion to dismiss. Rule 8(f) of the Federal Rules of Civil Procedure provides that "all pleadings shall be so construed as to do substantial justice." If they thought the amended complaint were vague, petitioners could have availed themselves of Rule 12(e) and moved for a more definite statement. 2A Moore, Federal Practice, § 12.08. They did not so move.

This Court, as did the Seventh Circuit, must assume, on a motion to dismiss, that the allegations of the amended complaint are true and construe the allegations liberally, resolving any doubts in favor of the respondents. *See Boddie* v. *Connecticut*, 401 U. S. 371, 373 (1971); *Contract Buyers League* v. *F & F Investment*, 300 F. Supp. 210, 214 (N. D. Ill. 1969), *aff'd sub nom* 420 F. 2d 1191 (7th Cir. 1970), *cert. denied*, 400 U. S. 821 (1970); *Jung* v. *K. & D. Mining Co.*, 260 F. 2d 607, 608 (7th Cir. 1958).

CONCLUSION.

For the foregoing reasons, respondents urge the Court to deny the petitions for a writ of certiorari.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois

EZELL LITTLETON, MANKER HARRIS, JAMES WILSON, CARL HAMPTON, HAZEL JAMES, WALTER GARRETT, CHARLES KOEN, FRANK WASHINGTON, CURTIS JOHNSON, CHERYL GARRETT, YVONDA TAYLOR, RUSSELL DEBERRY, ROBERT MARTIN, PRESTON EWING, JR., JAMES BROWN, HERMAN WHITFIELD, WALLACE WHITFIELD, LEROY LAMBERT, by his Father and Next Friend, HOBERT LAMBERT, MORRIS GARRETT, by his Father and Next Friend, LEVI GARRETT, individually and as representatives of a class,

Plaintiffs,

vs.

PEYTON BERBLING, individually and as State's Attorney for Alexander County, Illinois, EARL SHEPHERD, individually and as investigator for PEYTON BERBLING, CARL MEISENHEIMER, as Police Commissioner of the City of Cairo, Illinois, MICHAEL O'SHEA, as Magistrate of the Circuit Court for Alexander County, Illinois, and DOROTHY SPOMER, as Associate Circuit Judge for Alexander County, Illinois,

Defendants.

Civil Action No. 70-103

Equitable Relief Requested

AMENDED COMPLAINT.

Plaintiffs, Ezell Littleton, Manker Harris, James Wilson, Carl Hampton, Hazel James, Walter Garrett, Charles

Koen, Frank Washington, Curtis Johnson, Cheryl Garrett, Yvonda Taylor, Russell Deberry, Robert Martin, Preston Ewing, Jr., James Brown, Herman Whitfield, Wallace Whitfield, Leroy Lambert, by his father and next friend, Hobert Lambert, Morris Garrett, by his father and next friend, Levi Garrett, individually and as representatives of a class, by their attorneys, Martha Jenkins, James B. O'Shaughnessy and Alan M. Wiseman, complain of defendants, Peyton Berbling, individually and as State's Attorney for Alexander County, Illinois, Earl Sheperd, individually and as investigator for Peyton Berbling, Carl Meisenheimer, as Police Commissioner of the City of Cairo, Illinois, Michael O'Shea, as Magistrate of the Circuit Court for Alexander County, Illinois, and Dorothy Spomer, as Associate Circuit Judge for Alexander County, Illinois. Plaintiffs state as follows:

1. This is a civil-action under Title 42 U. S. C. Sections 1981, 1982, 1983, and 1985 for damages and for preliminary and permanent injunctions and other equitable relief, to enjoin the deprivation under color of law, custom and usage of Alexander County and the City of Cairo, Illinois, of plaintiffs and members of their class rights, privileges and immunities guaranteed by the First, Sixth, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States and by Title 42 U. S. C. Sections 1981, 1982, 1983, and 1985.

2. Jurisdiction is conferred on this Court by Title 28 U. S. C. Sections 1331 and 1343.

3(a) Plaintiffs are black citizens of the City of Cairo, Illinois, with the exception of plaintiffs Manker Harris and James Brown, who are white citizens of the City of Cairo, Illlinois.

(b) They bring this action as a class action, individually

and on behalf of all other persons similarly situated in the City of Cairo, Illinois.

(c) The class includes all those who, on account of their race or creed and because of their exercise of First Amendment rights, have in the past and continue to be subjected to the unconstitutional and selectively discriminatory enforcement and administration of criminal justice in Alexander County.

4(a) Plaintiffs are financially poor persons.

(b) They bring this action as a class action, individually and on behalf of all other persons similarily situated in the City of Cairo, Illinois.

(c) The class includes all those who, on account of their poverty, are unable to afford bail, or are unable to afford counsel and jury trials in city ordinance violation cases.

5. As to said classes of persons:

(a) They are so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the class; (c) the claims of plaintiffs are typical of the claims of the class; (d) plaintiffs will fairly and adequately protect the interests of the class; and (e) defendants have acted and refuse to act on grounds generally applicable to the classes, thereby making appropriate final relief with respect to the class as a whole.

6(a) Defendant Berbling is, and was at all times mentioned herein, the State's Attorney for Alexander County, Illinois and a citizen and resident of that County.

(b) As State's Attorney he is the chief prosecuting attorney for said county.

(c) He has authority to determine when criminal complaints may be filed and warrants issued, whether and how

to prosecute violations of state statutes, what the charges should be against accused persons, and also to recommend dismissals and reductions of charges, length of sentences, and the terms thereof.

(d) On information and belief defendant Berbling may also recommend the amount of bond and whether a convicted defendant should pay costs.

7. Defendant Meisenheimer is, and was at all times mentioned herein, a Police Commissioner of the City of Cairo, and a citizen of the City of Cairo, Illinois. As such he supervises the activities of the Cairo Police Department.

8(a) Defendant O'Shea is, and was at all times mentioned herein, the Magistrate for the Circuit Court of Alexander County, Illinois and a citizen of that County. As such, he has the authority to set bond for all persons charged with crime either under state law or city ordinance. He also has the authority to handle preliminary hearings, trials of ordinance violations and misdemeanors. In each of such cases, he determines the outcome and, in the case of ordinances and misdemeanors, the sentence to be imposed.

(b) Defendant Spomer is, and was at all times mentioned herein, the Associate Circuit Judge for Alexander County, Illinois, and a citizen of that county. As such, she has the authority to act in all criminal matters in Alexander County.

9. Defendant Earl Shepherd, is, and was at all times mentioned herein, employed by the Office of the State's Attorney as an investigator and assistant to defendant Berbling, and a citizen of Alexander County, Illinois.

FIRST CLAIM FOR RELIEF.

10. Since the early 1960's black citizens of Cairo, Illinois, together with a small number of white persons on their behalf, have been actively, peaceably and lawfully seeking equality of opportunity and treatment in employment, housing, education, participation in governmental decision making and in ordinary day-to-day relations with white citizens and officials of Cairo. As an important part of their protest, plaintiffs have participated in and encouraged others to participate in an economic boycott of merchants of the City of Cairo who plaintiffs consider have engaged in racial discrimination.

11. This active and lawful seeking after long overdue constitutional rights has generated and continues to generate a great deal of tension and antagonism from the white citizens and officials of Cairo.

12. As is hereinafter set forth more fully, defendant Berbling has engaged in, and continues to engage in, a pattern and practice of conduct under color of law, custom and usage of Alexander County, Illinois, in the administration of criminal justice in said county, which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and the right to be free from the vestiges of slavery as secured by the Thirteenth Amendment and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982 and 1983 of Title 42, United States Code.

13. Defendant Berbling, with a purpose of depriving plaintiffs of equal protection of the laws or equal privileges and immunities under the law, with a purposeful intent to discriminate upon the basis of race and creed, under color

of state law and authority, deprives plaintiffs of rights and privileges as citizens of the United States by neglecting to provide for their personal safety, although knowing of the possibility of racial disorders, by refusing to prosecute those who threaten plaintiffs' safety and property and by refusing to permit plaintiffs to give evidence against white persons respecting acts threatening their personal safety and property, with the design to intimidate plaintiffs so as to chill their exercise of the First Amendment right to assemble peaceably and their right to hold property to the same extent as is enjoyed by white citizens.

14. Defendant Berbling has denied and continues to deny to plaintiffs and members of their classes as described in paragraphs 3 and 4 herein of their constitutional rights in the following ways:

(a) It has been and continues to be the practice of defendant to refuse to initiate criminal proceedings and to refuse to hear criminal charges against members of the white race upon the complaints of members of the plaintiffs' class and to deprive plaintiffs of their right to give evidence affecting their security, for example:

(1) On March 28, 1969, defendant refused to permit James Wilson to file criminal charges against Charlie Sullivan, a white man, who pointed a gun at him as he (Wilson) attempted to move into the house next door to Charlie Sullivan on 22nd Street, in Cairo, Illinois. Sullivan threatened Wilson with the gun and told him to move the truck containing household furnishings and leave the area, thereby attempting to prevent James Wilson from holding property.

(2) On or about March 29, 1969, defendant refused to permit James Wilson to file criminal

charges against Charlie Sullivan who fired shots from a gun around James Wilson's home to intimidate his family in order to prevent James Wilson from holding property.

(3) In January, 1970, defendant refused to permit Robert Martin to file charges against Charlie Sullivan, who tried to run him down in a truck while peacefully marching in exercise of his First Amendment rights.

(4) In June, 1970, defendant refused to permit Ezell Littleton to file charges against a white man who without cause or justification assaulted and battered him.

(5) In June, 1970, defendant refused to permit Rev. Manker Harris to file charges against two white policemen of the City of Cairo for attempted murder and/or malicious prosecution.

(6) On August 10, 1970, defendant Berbling, through a subordinate, defendant Earl Shepherd, refused to permit plaintiff Hazel James to file criminal charges against Raymond Hurst, a white man, who had kicked plaintiff James in the stomach while she was peacefully demonstrating against the racially discriminatory practices of merchants and of public officials of the City of Cairo.

(7) In May, 1969, plaintiff Ewing and eight others could have and desired to bring criminal charges against a white man who threatened them with a shotgun, but did not because they knew of defendant's practice of refusing to take complaints and were discouraged from making useless gestures.

(b) It has been and continues to be the practice of defendant Berbling in those instances where complaints

have been filed by black persons against white persons involving misdemeanors to submit such to a grand jury, rather than proceed by information or complaint, and to interrogate complainants and witnesses before the grand jury with a purposeful intent to discriminate upon the basis of race and creed, thereby depriving plaintiffs and members of their class of their right to give evidence affecting their security and thereby chill their exercise of their right to assemble peaceably, for example: Morris Garrett (a 13 year old boy), on August 8, 1970, during a demonstration against the racially discriminatory practices of merchants and public officials of the City of Cairo, was struck by one Tom Madra. A complaint was filed which was presented to the grand jury. Morris Garrett appeared before the grand jury. Defendant Berbling, rather than question him regarding the incident, asked him such questions as "did you get paid for picketing?" A no-true bill was returned by the grand jury.

(c) It has been and continues to be the practice of defendant Berbling, in those instances where complaints have been filed by black persons against white persons involving misdemeanors, to submit such to a grand jury, rather than proceed by information or complaint, and, in some instances, fail to interrogate at all the complainant and witnesses respecting the incident, purposefully intending to discriminate upon the basis of race and creed, thereby depriving plaintiffs and members of their class of their right to give evidence affecting their security and thereby chill their exercise of their right to assemble peaceably, for example:

(1) On August 13, 1970, Cheryl Garrett and Yvonda Taylor, ages 18 and 16 respectively, were shot at by one Jack Guetterman, Jr. Rev. Walter

Garrett and Ezell Littleton, following a telephone call from the young girls, went to the scene of the shooting. Shortly thereafter police officers arrived. While Rev. Walter Garrett was discussing the situation with one police officer, one Jack Guetterman, Sr. struck Rev. Garrett in the face, causing him to fall to the ground. A complaint was filed by Rev. Walter Garrett respecting this incident. Defendant Berbling presented the complaint to the grand jury, but Rev. Garrett was not interrogated at all respecting the incident. Ezell Littleton, who witnessed the assault, was not called to testify.

(2) On or about August 8, 1970, Curtis Johnson was struck by one Al Moss while demonstrating against the racially discriminatory practices of merchants and public officials of the City of Cairo. A complaint was filed, which was presented to the grand jury. Curtis Johnson, however, was not interrogated by defendant Berbling respecting the incident.

(d) It has been and continues to be the practice of defendant Berbling in the few criminal proceedings he has instituted against white persons at the behest of plaintiffs to inadequately prosecute the cases in order to lose or to settle them on terms more favorable than those against blacks;

(e) It has been and continues to be the practice of defendant Berbling to request or recommend, in cases involving plaintiffs and members of their class, substantially greater bonds and sentences than requested or recommended in cases involving white persons;

(f) It has been and continues to be the practice of defendant Berbling to charge plaintiffs and members of

their class with significantly more serious charges for conduct which would result in no charge or a minor charge against a white person.

(g) Defendant Berbling has sought to deprive plaintiffs of their right to give evidence respecting the security of members of their class by seeking the dropping of a criminal charge arising out of a complaint filed by Frank Hollis, a black person, against Tom Madra, a white person, in return for which defendant would drop pending criminal charges against several of the plaintiffs.

15. Each of said practices is carried out wilfully and maliciously with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County and to deprive plaintiffs and members of their class of the right to give evidence against those who threaten their security, peace, and tranquility and the right to hold property as enjoyed by white citizens.

16. Each of said practices is carried out wilfully and maliciously with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

17. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States and of rights secured by laws of the United States, viz., Sections 1981, 1982 and 1983 of Title 42, United States Code.

18. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendant as hereinabove set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff classes will suffer irreparable harm.

WHEREFORE, plaintiffs respectfully pray that:

1. Defendant be preliminarily and permanently enjoined from depriving plaintiffs and members of the plaintiff class of their constitutional rights in the manner set forth in paragraphs 13 and 14 of this complaint, and that defendant be required to submit a monthly report to this Court concerning the nature, status and disposition of any complaint brought to him by plaintiffs or members of their class, or by white persons against plaintiffs or members of their class.

2. Defendant be preliminarily and permanently enjoined from neglecting his duties of office in failing to interrogate impartially and without discrimination witnesses before the grand jury.

3. Defendant be preliminarily and permanently enjoined from requesting more severe bond and sentences for plaintiffs and members of their class than for white persons;

4. Defendant be preliminarily and permanently enjoined from setting more severe charges against plaintiffs and members of their class than for white persons;

5. This Court maintain continuing jurisdiction in this action;

6. Grant to plaintiffs their costs and reasonable attorneys' fees; and

7. Grant such other relief as to the Court may seem just and proper.

SECOND CLAIM FOR RELIEF.

19. Plaintiffs reallege the allegations of paragraphs 1-3, 5-6 and 10-17.

20. Each of the named plaintiffs suffered humiliation, despair, frustration, great anxiety, and physical distress as a result of the practices of defendant alleged in paragraphs

12-14, and in particular by defendant's refusal to permit plaintiffs to initiate criminal proceedings, to give evidence, and to benefit from laws protecting their security to the same extent as white citizens.

WHEREFORE, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This court grant such other rellief as may be just and proper.

THIRD CLAIM FOR RELIEF.

21. Plaintiffs reallege the allegations of paragraphs 1-3, 5-6, 9-13 and 15-16.

22. Defendant Berbling in conspiracy with defendant Shepherd, with a purpose of depriving plaintiffs of equal protection of the laws or equal privileges and immunities under the law, with a purposeful intent to discriminate upon the basis of race and creed, under color of state law and authority, deprived plaintiffs of rights and privileges as citizens of the United States, as follows:

(a) Defendants Berbling and Shepherd have conspired to deprive plaintiffs of equal protection of the laws by neglecting to provide for their personal safety, because of their race, although knowing of the possibility of racial disorders, by refusing to prosecute those who threaten plaintiffs' safety.

(b) Defendants Berbling and Shepherd have conspired to prevent plaintiffs from giving evidence against white persons respecting acts threatening their personal safety with the design to intimidate plaintiffs so as to chill their exercise of the First Amendment

right to assemble peaceably. For example, on Saturday, August 8, 1970, plaintiff Hazel James was peacefully demonstrating against the racially discriminatory practices of merchants and public officials of the City of Cairo pursuant to a boycott when she was kicked in the stomach by one Raymond Hurst. Plaintiff James was rushed to a hospital for treatment of the injury sustained. On Monday, August 10, 1970, plaintiff James sought to file a complaint, but defendant Shepherd, at defendant Berbling's directions, refused to allow it.

23. Such practices are carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982, 1983 and 1985 of Title 42, United States Code.

WHEREFORE, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This Court grant such other relief as may be just and proper.

FOURTH CLAIM FOR RELIEF.

24. Plaintiffs reallege the allegations of paragraphs 1-3, 5, 9-11, 15-17 and 20.

25. Defendant Shepherd has engaged in, and continues to engage in, a pattern and practice of conduct under color of law, custom and usage of Alexander County, Illinois, which has deprived and continues to deprive plaintiffs and

members of their class of their rights to due process of law and the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982 and 1983 of Title 42, United States Code.

26. Defendant Shepherd, with a purpose of depriving plaintiffs of equal protection of the laws or equal privileges and immunities under the law, with a purposeful intent to discriminate upon the basis of race and creed, under color of state law and authority, deprives plaintiffs of rights and privileges as citizens of the United States by refusing to permit plaintiffs to give evidence against white persons respecting acts threatening their personal safety, with the design to intimidate plaintiffs so as to chill their exercise of the First Amendment right to assemble peaceably; for example:

On August 18, 1970, defendant Shepherd refused to permit plaintiff Hazel James to file criminal charges against one Raymond Hurst, a white man, who, on August 8, 1970, had kicked plaintiff James in the stomach while she was peacefully demonstrating against the racially discriminatory practices of merchants and public officials of the City of Cairo.

WHEREFORE, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This Court grant such other relief as may be just and proper.

FIFTH CLAIM FOR RELIEF.

27. Plaintiffs reallege the allegations in paragraphs 1-3, 5, 7 and 10-11.

28. As hereinafter set forth more fully, defendant Meisenheimer has engaged in, and continues to engage in, a pattern and practice of conduct, under color of law, custom and usage of the City of Cairo, Illinois, in the enforcement of criminal justice in said city, all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and to equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982, 1983, 1985 and 1986, Title 42, United States Code.

29. Defendant Meisenheimer has denied and continues to deny to plaintiffs and members of their class their constitutional rights in the following ways:

(a) Defendant has made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where such charges are not warranted and are merely for the purpose of harrassment and to discourage and prevent plaintiffs and their class from exercising their constitutional rights.

(b) Defendant has made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where there may be some colorable basis to the arrest or charge, but the crime defined in the charge is much harsher than is warranted by the facts and is far more severe than like charges would be against a white person.

30. Each of said practices is carried out with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

31. Each of said practices is carried out with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

32. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

33. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendants as herein set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

WHEREFORE, plaintiffs respectfully pray that:

1. Defendant be preliminarily and permanently enjoined from depriving plaintiffs and members of the plaintiff class of their constiutional rights in the manner set forth in paragraph 29 of this complaint, and that defendants be required to submit a monthly report to this Court concerning the nature, status and details of each arrest of and each charge filed against plaintiffs or members of plaintiff class in which the Police Department of the City of Cairo was involved in any way;

2. This Court maintain continuing jurisdiction in this action;

3. Grant to plaintiffs their costs and reasonable attorneys fees; and

4. Grant such other relief as to the Court may seem just and proper.

SIXTH CLAIM FOR RELIEF.

34. Plaintiffs reallege the allegations in paragraphs 1-5 and 8 and 10-11.

35. As hereinafter set forth more fully, defendants O'Shea and Spomer have engaged in and continue to engage in, a pattern and practice of conduct, under color of law, custom and usage of Alexander County, Illinois, in the administration of criminal justice in said county, all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

36. Defendants O'Shea and Spomer have denied and continue to deny to plaintiffs and members of their class their constitutional rights in the following ways:

(a) They set bond in criminal cases without regard to the Constitution and statutes of the State of Illinois requiring that bond be merely an assurance that defendant will appear in court when required, not that it be a punishment, in that they follow an unofficial bond schedule without regard to the facts of a case or circumstances of an individual defendant, all in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

(b) On information and belief they set sentences higher for plaintiffs and members of plaintiffs' class than for white persons and impose harsher conditions.

(c) It is the custom and practice of defendants O'Shea and Spomer to require plaintiffs and members of their class when charged with violations of city ordinances which carry fines and possible jail penalties if the fine cannot be paid, to pay for a trial by jury, all in violation of their rights under the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

37. Each of said practices is carried out with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

38. Each of said practices is carried out with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

39. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

40. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendants as herein set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

WHEREFORE, plaintiffs respectfully pray that:

1. Defendants be preliminarily and permanently enjoined from depriving plaintiffs and members of their class of their constitutional rights in the manner set forth in paragraph 36.

2. Grant to plaintiffs their costs and attorneys fees herein; and

3. Grant such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ JAMES B. O'SHAUGHNESSY,
James B. O'Shaughnessy,

/s/ ALAN M. WISEMAN,
Alan M. Wiseman.

SCHIFF HARDIN WAITE
DORSCHEL & BRITTON,
231 S. LaSalle Street,
Chicago, Illinois 60604,
CEntral 6-4500.

APPENDIX B.

U. S. Const. amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Const. amend. VIII:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U. S. Const. amend. XIII:

> SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

U. S. Const. amend XIV:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> • • • • •
>
> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U. S. C. § 1343:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> • • • • •
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U. S. C. § 1981:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white persons, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U. S. C. § 1982:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U. S. C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at lawsuit in equity, or other proper proceeding for redress.

42 U. S. C. § 1985:

§ 1985(2) ". . . or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) If two or more persons in any State or Territory conspire or go in disguise on the highways or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Ill. Const., Art. 1, § 13:

The right of trial by jury as heretofore enjoyed shall remain inviolate.

Ill. Rev. Stat., ch. 14 § 1:

Before entering upon the respective duties of their office, the attorney general and state's attorneys shall each be commissioned by the governor, and shall take the following oath or affirmation:

I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of attorney general (or state's attorney, as the case may be), according to the best of my ability.

Ill. Rev. Stat., ch. 37 § 72.2:

> **. . . The several judges of the circuit courts of this State, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation, which shall be filed in the office of the Secretary of State:**
>
> **I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of judge of ..... court, according to the best of my ability.**